

§ 660.26

(ii) For permit actions related to the application and initial issuance process for the trawl rationalization program listed in subpart D of part 660, the status of permits pending appeal is as follows:

(A) For permit and endorsement qualifications and eligibility appeals (i.e., QS permit, MS permit, MS/CV endorsement, C/P endorsement), any permit or endorsement under appeal after December 31, 2010 may not be used to fish in the Pacific Coast groundfish fishery until a final decision on the appeal has been made. If the permit or endorsement will be issued, the permit or endorsement will be effective upon approval, except for QS permits, which will be effective at the start of the next fishing year.

(B) For a QS or IBQ amount for specific IFQ management unit species under appeal, the QS or IBQ amount for the IFQ species under appeal will remain as the amount assigned to the associated QS permit in the IAD). The QS permit may be used to fish in the Pacific Coast groundfish fishery with the QS or IBQ amounts assigned to the QS permit in the IAD. Once a final decision on the appeal has been made and if a revised QS or IBQ amount for a specific IFQ species will be assigned to the QS permit, the additional QS or IBQ amount associated with the QS permit will be effective at the start of the next calendar year following the final decision.

(C) For a Pacific whiting catch history assignment associated with an MS/CV endorsement under appeal, the catch history assignment will remain as that previously assigned to the associated MS/CV-endorsed limited entry permit in the IAD). The MS/CV-endorsed limited entry permit may be used to fish in the Pacific Coast groundfish fishery with the catch history assigned to the MS/CV-endorsed permit in the IAD. Once a final decision on the appeal has been made, and if a revised catch history assignment will be issued, the additional Pacific whiting catch history assignment associated with the MS/CV endorsement will be effective at the start of the next calendar year following the final decision.

50 CFR Ch. VI (10–1–10 Edition)

(h) *Permit sanctions.* (1) All permits and licenses issued or applied for under Subparts C through G are subject to sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

(2) All Shorebased IFQ Program permits (QS permit, first receiver site license), QS accounts, vessel accounts, and MS Coop Program permits (MS permit, MS/CV-endorsed permit, and MS coop permit), and C/P Coop Program permits (C/P-endorsed permit, C/P coop permit) issued under subpart D:

(i) Are considered permits for the purposes of 16 U.S.C. 1857, 1858, and 1859;

(ii) May be revoked, limited, or modified at any time in accordance with the Magnuson-Stevens Act, including revocation if the system is found to have jeopardized the sustainability of the stocks or the safety of fishermen;

(iii) Shall not confer any right of compensation to the holder of such permits, licenses, and accounts if it is revoked, limited, or modified;

(iv) Shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(v) Shall be considered a grant of permission to the holder of the permit, license, or account to engage in activities permitted by such permit, license, or account.

§ 660.26 Pacific whiting vessel licenses.

(a) *General.* After May 11, 2009, participation in the Pacific whiting seasons described in § 660.131(b), subpart D requires:

(1) An owner of any vessel that catches Pacific whiting must own a limited entry permit, registered for use with that vessel, with a trawl gear endorsement; and, a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to fish;

(2) An owner of any mothership vessel that processes Pacific whiting to hold a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to fish.

(b) *In combination with a limited entry permit.* Pacific whiting vessel licenses

are separate from limited entry permits and do not license a vessel to harvest Pacific whiting in the primary Pacific whiting season unless that vessel is also registered for use with a limited entry permit with a trawl gear endorsement.

(c) *Pacific whiting vessel license qualifying criteria*—(1) *Qualifying catch and/or processing history*. Vessel catch and/or processing history will be used to determine whether that vessel meets the qualifying criteria for a Pacific whiting vessel license and to determine the sectors for which that vessel may qualify. Vessel catch and/or processing history includes only the catch and/or processed product of that particular vessel, as identified in association with the vessel's USCG number. Only Pacific whiting regulated 50 CFR part 660, subparts C and D that was taken with midwater (or pelagic) trawl gear will be considered for the Pacific whiting vessel license. Pacific whiting harvested or processed by a vessel that has since been totally lost, scrapped, or is rebuilt such that a new U.S.C.G. documentation number would be required will not be considered for this license. Pacific whiting harvested or processed illegally or landed illegally will not be considered for this license. Catch and/or processing history associated with a vessel whose permit was purchased by the Federal Government through the Pacific Coast groundfish fishing capacity reduction program, as identified at 68 FR 62435 (November 4, 2003), does not qualify a vessel for a Pacific whiting vessel license and no vessel owner may apply for or receive a Pacific whiting vessel license based on catch and/or processing history from one of those buyback vessels. The following sector-specific license qualification criteria apply:

(i) For catcher/processor vessels, the qualifying criteria for a Pacific whiting vessel license is evidence of having caught and processed any amount of Pacific whiting during a primary catcher/processor season during the period January 1, 1997 through January 1, 2007.

(ii) For mothership at-sea processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having received and proc-

essed any amount of Pacific whiting during a primary mothership season during the period January 1, 1997 through January 1, 2007.

(iii) For catcher vessels delivering Pacific whiting to at-sea mothership processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having delivered any amount of Pacific whiting to a mothership processor during a primary mothership season during the period January 1, 1997, through January 1, 2007.

(iv) For catcher vessels delivering Pacific whiting to Pacific whiting shoreside first receivers, the qualifying criteria for a Pacific whiting vessel license is documentation of having made at least one landing of Pacific whiting taken with midwater trawl gear during a primary shorebased season during the period January 1, 1994, through January 1, 2007, and where the weight of Pacific whiting exceeded 50 percent of the total weight of the landing.

(2) *Documentation and burden of proof*. A vessel owner applying for a Pacific whiting vessel license has the burden to submit documentation that qualification requirements are met. An application that does not include documentation of meeting the qualification requirements during the qualifying years will be considered incomplete and will not be reviewed. The following standards apply:

(i) A certified copy of the current vessel document (USCG or State) is the best documentation of vessel ownership and LOA.

(ii) A certified copy of a State fish receiving ticket is the best documentation of a landing at a Pacific whiting shoreside first receiver, and of the type of gear used.

(iii) For participants in the at-sea Pacific whiting fisheries, documentation of participation could include, but is not limited to: A final observer report documenting a particular catcher vessel, mothership, or catcher/processor's participation in the Pacific whiting fishery in an applicable year and during the applicable primary season, a bill of lading for Pacific whiting from an applicable year and during the applicable primary season, a catcher vessel receipt from a particular

mothership known to have fished in the Pacific whiting fishery during an applicable year, a signed copy of a Daily Receipt of Fish and Cumulative Production Logbook (mothership sector) or Daily Fishing and Cumulative Production Logbook (catcher/processor sector) from an applicable year during the applicable primary season.

(iv) Such other relevant, credible documentation as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(d) *Issuance process for Pacific whiting vessel licenses.* (1) SFD will mail, to the most recent address provided to the SFD, Permits Office, a Pacific whiting vessel license application to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS will also make license applications available online at: <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>. A vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license will have until May 11, 2009, to submit an application with documentation showing how his/her vessel has met the qualifying criteria described in this section. NMFS will not accept applications for Pacific whiting vessel licenses received after May 11, 2009.

(2) After receipt of a complete application, NMFS will notify applicants by letter of its determination whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time. After May 11, 2009, NMFS will publish a list of vessels that qualified for Pacific whiting vessel licenses in the FEDERAL REGISTER.

(3) If a vessel owner files an appeal from the determination under paragraph (d)(2) of this section, the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and

must allege facts or circumstances, and include credible documentation demonstrating why the vessel qualifies for a Pacific whiting vessel license. The appeal of a denial of an application for a Pacific whiting vessel license will not be referred to the Council for a recommendation, nor will any appeals be accepted by NMFS after June 15, 2009.

(4) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce as of the date of the decision.

(e) *Notification to NMFS of changes to Pacific whiting vessel license information.* The owner of a vessel registered for use with a Pacific whiting vessel license must provide a written request to NMFS to change the name or names of vessel owners provided on the vessel license, or to change the licensed vessel's name. The request must detail the names of all new vessel owners as registered with U.S. Coast Guard, a business address for the vessel owner, business phone and fax number, tax identification number, date of birth, and/or date of incorporation for each individual and/or entity, and a copy of the vessel documentation (USCG 1270) to show proof of ownership. NMFS will re-issue a new vessel license with the names of the new vessel owners and/or vessel name information. The Pacific Whiting vessel license is considered void if the name of the vessel or vessel owner is changed from that given on the license. In addition, the vessel owner must report to NMFS any change in address for the vessel owner within 15 days of that change. Although the name of an individual vessel registered for use with a Pacific whiting vessel license may be changed, the license itself may not be registered to any vessel other than the vessel to which it was originally issued, as identified by that vessel's United States Coast Guard documentation number.